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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )

Implementation of the )  
 Pay Telephone Reclassification )  
 and Compensation Provisions of )  
 Telecommunications Act of 1996 )

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CC Docket No. 96-128

To: The Commission

**PETITION FOR RECONSIDERATION**

Source One Wireless II, L.L.C. ("Source One"), submits this its Petition for Reconsideration ("Petition") of the Second Report and Order, 62 FR 58659, released October 30, 1997. in the above captioned proceeding. Source One requests reconsideration of the default per-call compensation rate for subscriber 800 and access code calls originated from payphones.

**INTRODUCTION**

Source One is one of the thirteen largest (by subscriber count) providers of paging service in the United States. Source One has focused its growth over the past three years on a nine state Midwest region, centered around the Chicago metropolitan area. Key to its growth strategy is "Calling Party Pays" ("CPP") paging<sup>1/</sup> which Source One has tested in the Chicago and Detroit markets over the past two years. In 1995, Source One introduced the nation's first calling party paging. In 1997, it created nationwide coverage

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<sup>1/</sup> Under CPP, the owner of the pager is responsible for purchasing the pager itself, and not paying a monthly service or "air-time bill"; rather those who call the pager owner are responsible for paying for their own calls

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by means of a frequency sharing arrangement with a major paging carrier throughout the United States. Source One offers both traditional paging as well as calling party pays paging and uses 800 numbers for its subscribers to access its paging network.

Source One did not participate in the proceedings below due to its reliance on membership in a trade association and did not want to duplicate its efforts or burden the Commission. However, it is being adversely affected by the effects of the Second Report and Order in the following respect. The referenced Second Report and Order mandated a \$0.284 cent compensation default rate for payphone service providers ("PSP") for subscriber 800 and access code calls for each payphone call. In order for the CPP provider to receive its full revenue from such calls, the payphone user must be able to pay for the call by depositing the payphone charge in the coin box at the time of the call. Otherwise, for a CPP provider who charges \$0.35 for a CPP page, 81% of the charge for the payphone call will be paid to the PSP. Accordingly, Source One is filing this petition.

In support of this Petition, the following is respectfully shown:

#### **BACKGROUND**

In Illinois Public Telecommunications Ass'n v. FCC., 117 F.3d 555 (D.C. Cir. 1997) ("Illinois"), the United States Court of Appeals for the District of Columbia Circuit vacated and remanded portions of the Commission's Report and Order, in the referenced proceeding, stating, among other issues, that the Commission did not adequately justify setting the per-call compensation rate for subscriber 800 and access code calls at \$0.35. In response to the per-call compensation rate only, the Commission issued Public Notice, "Pleading Cycle Established for Comment on Remand Issues in the Payphone Providing," DA 97-163, released August 5, 1997 ("Public Notice"). Parties filed comments and reply comments and in the Second Report and Order, the Commission set the compensation rate at \$0.284 per call. Source One opposes the action of the Second Report and Order

### **The Commission Should Reconsider Compensation Rate**

It is clear from the comments and reply comments filed by the parties in response to Public Notice, that the Commission cannot rely on the market rate it selected, nor can it rely on any other market rate under the carrier-pays system for two reasons.

First, there is clear evidence that the IXC's cannot or will not employ the technologies discussed by the Commission as necessary for a carrier pays system and thus the basis for a carrier pays system may be undermined. IXC's have neither the technological ability nor the economic incentive to block calls.<sup>2/</sup> Existing technologies will not support the blocking envisioned by some IXC's and other IXC's have stated that they will not develop blocking technologies.<sup>3/</sup> Furthermore, the IXC's have no economic incentive to block calls.<sup>4/</sup> The LEC's have even conceded that their coding digit proposal does not allow IXC's and their subscribers to identify payphone-originated calls with precision, stating that IXC's "can use the '07/'27' ANI ii digit codes to identify and segregate calls that may have originated on payphones."<sup>5/</sup>

In order for the IXC to block calls on a per-call or per-subscriber basis, it needs at least two pieces of data. First, the IXC needs to receive from the ILEC, on a real-time basis, the two digit code designating the call as one originating from a payphone.<sup>6/</sup> Second, the IXC would need to receive from the ILEC the price charged by the PSP on a

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<sup>2/</sup> Whitepaper on the Provision of ANI Coding Digits of the LEC ANI Coalition, CC Docket No. 96-128, at 7 (filed June 16, 1997) ("LEC Whitepaper"). The LEC ANI Coalition was formed by a number of LEC's, including Southern New England Telephone Co., Ameritech, Bell Atlantic, BellSouth, GTE, NYNEX, Pacific Bell, Southwestern Bell Telephone Co., and US West.

<sup>3/</sup> *Id.*

<sup>4/</sup> *Id.* at 6-8.

<sup>5/</sup> *Id.* at 7.

<sup>6/</sup> The code needs to be one specifically designating the call as one originating from a payphone, and not as one originating from a restricted line.

real-time basis. It could then separate out calls with codes indicating that they originated from payphones, and compare the ANI to the compensation database. Only if both items of information could be made available to the IXC, would it then be possible for the IXC to block calls on a per-call or per-subscriber basis. However, according to the LEC ANI Coalition, this data cannot be made available to the IXCs, at least at an economically feasible cost.

In this Second Report and Order, the Commission has further shifted from its original concept that the *market* should set the rate of compensation for 800 calls<sup>7/</sup> by setting forth rules that ensure that a competitive market for such calls does not exist. The Commission is requiring IXCs, not callers, to compensate the payphone service providers ("PSPs"). If a caller incurs no charge to place a payphone call, the caller will not be affected directly by the cost of the call. The market, therefore, cannot set the price in the manner envisioned by the Commission.

Secondly, the Illinois Court has made it clear that the Commission must take into account the fact that the costs of local coin calls are different from the costs of 800 subscriber and access code calls and, in fact, the record contains evidence that the costs of coin calls are higher. Illinois at 14. The differences between subscriber 800 calls and local coin calls are substantial. The parties to this proceeding have discussed the various differences: commissions to premises owners; line charges; and coin collection costs, which includes field service and maintenance costs. Other points of dispute are billing costs and bad debt expense; capital expenditure of payphone equipment; and installation that solely are attributable to local coin calls. From these discussions, it is apparent then that there are substantial differences between the costs of local coin calls and subscriber 800 calls that must be accounted for in setting a fair compensation rate. However, the

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<sup>7/</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order*, 11 FCC Rcd., 20541, 20583 (1996) ("Payphone Order").

Commission refused to consider this discrepancy, concluding that even though there was a real difference, the parties failed to provide sufficient information! Second Report and Order at 19.

Further, the Commission failed to recognize that access code and subscriber 800 calling are two different services, with different usage and cost characteristics. Access code calls provide connections with an IXC who will complete the call and charge either the calling party or another person, based on the calling party's choice. Subscriber 800 calls are placed to the 800 subscriber who agrees in advance to pay on a bulk discount basis. The fact that there are different usage characteristics is reflected in the pricing of subscriber 800 services. Subscribers to 800 services pay on an increment-of-time basis, not per call. Thus, the Commission should not have treated all subscriber 800 and access code calls similarly when the record demonstrates that all such calls are not similar. Based on all of the foregoing facts, a different mechanism must be employed which would require no Commission guesswork.

**The Commission Should Adopt  
Calling-Party-Pays Compensation**

The Commission in this Second Report and Order, as it did earlier in this proceeding, declined to use a calling-party-pays approach in large part because of an assumption that calling parties do not expect to pay for 800 calls.<sup>8/</sup> Further, the Commission erroneously dismissed out of hand the paging industry's concerns by declining to address any of the issues raised by it. Despite the fact that it is clear that there are vastly different calculations and theories of cost responsibility, the Commission arbitrarily picked a number for PSP compensation in an unwieldy accounting/payment system that is not reflective of the market.

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<sup>8/</sup> *Reconsideration Order* at ¶88.

In implementing the payphone provisions of the Telecommunications Act, the Commission sought to "minimize[] transaction costs on the caller and on the industry." <sup>9/</sup> Apparently assuming that this transaction cost would never reach the caller, the Commission adopted this cumbersome carrier pays system because it stated that it was "the least burdensome, most cost effective manner" of giving the payment obligation to that party who was the "primary economic beneficiary" of payphone calls.<sup>10/</sup> However, a carrier pays system, is more burdensome and costly than a caller-pays system and imposes significant burdens on *every* participant in the payphone market, including the caller who will see some indirect cost increase. The Commission's rule imposes costly burdens on IXCs, who must implement a system for tracking each 800 call made from a payphone and for identifying the phone used for each call, <sup>11/</sup> which it has also recognized would "require new investments for some carriers." Next, the Commission's system burdens LECs, who must provide IXCs with quarterly lists of ANIs for all payphones in the LEC's service area. <sup>12/</sup> LECs would also need to "provide verification of disputed ANIs on request," and notify IXCs when a payphone is disconnected.<sup>13/</sup> Then, the Commission's scheme imposes substantial burdens on 800 number subscribers, particularly paging companies like Source One. These companies do not have the ability to track calls from payphones and thus, they cannot predict the IXC costs or collect per-call charges from customers. All these companies can do is to spread the PSPs costs over all their customers, which could impact existing contracts. Finally, the Commission's

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<sup>9/</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Notice of Proposed Rulemaking*, 11 FCC Rcd., 6716, 6730 (1996) ("Payphone NPRM").

<sup>10/</sup> *Payphone Report & Order*, 11 FCC Rcd. at 20584.

<sup>11/</sup> *See id.* at 20567, 20590-91.

<sup>12/</sup> *Id.* at 20597.

<sup>13/</sup> *Id.*

rules put into place regulatory requirements that the 1996 Act sought to avoid, by adding additional reporting burdens: IXCs must provide the Commission with "annual verification of their per-call tracking functions" upon request, and file annual reports with the Commission listing the total compensation paid to each PSP.<sup>14/</sup>

In contrast to this extraordinary regulatory exercise, charging *the caller* requires the caller to simply deposit a coin or use a credit card in order to make an 800 call. Nonetheless, without any evidence in the record, the Commission leaped to the facile conclusion that this would unduly burden and increase transaction costs to callers.<sup>15/</sup> There is no evidence in the record for concluding that callers do not expect to pay to use a payphone.

Further, the Commission erred in its analysis that the primary economic beneficiary of subscriber 800 calls is the carrier that carries the call. It also stated that, "... it is the called party that receives greater economic benefit from the payphone call than the calling party." <sup>16/</sup> However, as recognized by Congress in the Act,<sup>17/</sup> the primary beneficiary of *payphone* calls is the caller.

A calling-party-pays mechanism for payphone compensation provides economic incentive to the caller, who has the ability to choose the lowest cost service. Under the present carrier-pays mechanism, the party placing the call is not concerned about the rate being charged by the payphone provider to the IXC, and ultimately to the called party. The calling party will therefore place the call regardless of the rate being charged. Under this approach, there is no incentive for the PSP to consider market demands. As discussed above, this is due to the fact IXCs cannot, and apparently will not, block calls

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<sup>14/</sup> *Payphone Report & Order*, 11 FCC Rcd. at 20592, 20596-97.

<sup>15/</sup> *Id.* at 21275.

<sup>16/</sup> *Id.* at 21275.

<sup>17/</sup> See 47 U.S.C. §276(b)(1).

on a per-call or per-subscriber basis. While it is the called party that bears the burden of payphone compensation under the current Commission approach, the called party --which does not know the payphone rate and has no ability to reject the call on a per call basis -- is not able to exert market influence on the PSPs to lower their rates. Under these conditions, a competitive market for 800 subscriber and access code calls is not possible.

On the other hand, a calling-party-pays approach creates the appropriate economic incentives for the calling party to choose the PSP with the most competitive rates. The fact that the calling party has this choice puts pressure on the PSPs to charge competitive rates, or to risk losing callers. If the rate is too high, consumers will place fewer calls from those phones, thereby pressuring the PSP to lower its rates. Thus, the public benefits from this market pressure by lower prices and better services. And this is the way it should be in an efficient and competitive market, one in which the costs are being borne by the cost causer.

An alternative approach which was discussed by AirTouch in its Comments on Remand of AirTouch Paging at footnote 10, and Its Reply at 5, would be to establish a "unique 8XX code (e.g. 877) which would be toll-free in terms of long distance charges, but could be accessed from a payphone only if the person initiating the call deposits coins. In this approach, long distance carriers would not establish toll-free access codes within this 8XX code," if they did not want their customers to have to put coins in the payphone in order to reach their access number. Thus, argued AirTouch, the mixture of subscriber 800 and 800 access calls which created problems under the Telephone Consumer Services Improvement Act ("TOSCIA") will be eliminated. However, here again, the Commission declined to modify its clumsy system of cost tracking and compensation, despite the fact that such a solution would be the most equitable and market-based approach to PSP compensation.

In sum, it can be seen that the Commission's approach, based upon an illusory and debatable market price is not sound. The best method of obtaining a true market cost is



by letting the customer pay the PSP charge. In that way, the public, not the regulatory agency, determines what the cost should be.

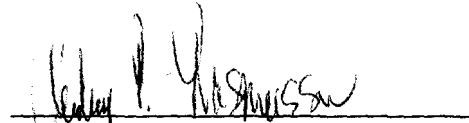
**CONCLUSION**

For all of the reasons specified above, Source One respectfully requests that the Commission reconsider its carrier pays structure for PSPs compensation and adopt a calling-party-pays mechanism.

Respectfully Submitted,

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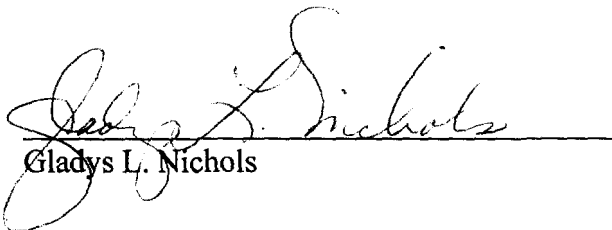
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